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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,989	11/18/2003	Victor F. Man	163.1283USC3	7577

7590 02/20/2004

Attention: Dennis R. Daley  
MERCHANT & GOULD P.C.  
P. O. Box 2903  
Minneapolis, MN 55402-0903

EXAMINER
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MRUK, BRIAN P

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 02/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/716,989

Applicant(s)

MAN ET AL.

Examiner

Brian P Mruk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 39-79 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39-79 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11-18-03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The examiner construes the phrase "about 0" in instant claims 39, 42, 43, 60 and 73 to mean numbers that are larger than zero, and numbers that include zero.

Therefore, since "about 0" includes zero, the examiner asserts that the limitations that follow the phrase "about 0" are optional.

### ***Claim Objections***

2. Claims 39-59 are objected to because of the following informalities:

In instant claim 39, a space should be inserted between the greater than or equal to symbol and the number one.

Instant claims 40-59 are objected to for being dependent upon a claim with the above addressed objection (i.e. claim 39).

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 64 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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5. Claim 64 recites the limitation "wherein the polymer additive" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. The examiner suggests that instant claim 64 should be amended to depend from claim 63 to provide proper antecedent basis. Appropriate correction and/or clarification is required.

### Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 39-79 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-41 of U.S. Patent No. 6,525,015. Although the conflicting claims are not identical, they are not patentably distinct from each other because Man et al, U.S. Patent No. 6,525,015, claims a similar alkaline detergent composition and a method for removing soil from an article with an alkaline detergent composition comprising an effective soil removing amount of a source of alkalinity, an alkyl polyglycoside surfactant, a nonionic surfactant, a silicone

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surfactant, and adjunct ingredients (see claims 1-41 of Man et al, U.S. Patent No. 6,525,015), as required by applicant in instant claims 39-79. Although Man et al, U.S. Patent No. 6,525,015, discloses a similar composition, they are not identical, because Man et al, U.S. Patent No. 6,525,015, requires an alkyl polyglycoside surfactant (see claims 1, 22 and 35 of Man et al, U.S. Patent No. 6,525,015), whereas the instant claims require a nonionic surfactant. Therefore, claims 39-79 of the instant invention are an obvious formulation in view of claims 1-41 of Man et al, U.S. Patent No. 6,525,015.

8. Claims 39-79 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-42 of U.S. Patent No. 6,369,021. Although the conflicting claims are not identical, they are not patentably distinct from each other because Man et al, U.S. Patent No. 6,369,021, claims a similar alkaline detergent composition and a method for removing soil from an article with an alkaline detergent composition comprising an effective soil removing amount of a source of alkalinity, an alkyl polyglycoside surfactant, a nonionic surfactant, a silicone surfactant, and adjunct ingredients (see claims 1-42 of Man et al, U.S. Patent No. 6,369,021), as required by applicant in instant claims 39-79. Although Man et al, U.S. Patent No. 6,369,021, discloses a similar composition, they are not identical, because Man et al, U.S. Patent No. 6,369,021, requires an alkyl polyglycoside surfactant (see claims 1, 24 and 37 of Man et al, U.S. Patent No. 6,369,021), whereas the instant claims require a nonionic surfactant. Therefore, claims 39-79 of the instant invention

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are an obvious formulation in view of claims 1-42 of Man et al, U.S. Patent No. 6,369,021.

9. Claims 39-79 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-40 of U.S. Patent No. 6,649,586. Although the conflicting claims are not identical, they are not patentably distinct from each other because Man et al, U.S. Patent No. 6,649,586, claims a similar alkaline detergent composition and a method for removing soil from an article with an alkaline detergent composition comprising an effective soil removing amount of a source of alkalinity, an alkyl polyglycoside surfactant, a nonionic surfactant, a silicone surfactant, and adjunct ingredients (see claims 1-40 of Man et al, U.S. Patent No. 6,649,586), as required by applicant in instant claims 39-79. Although Man et al, U.S. Patent No. 6,649,586, discloses a similar composition, they are not identical, because Man et al, U.S. Patent No. 6,649,586, requires a surfactant containing a sugar ring (see claims 1, 21 and 34 of Man et al, U.S. Patent No. 6,649,586), whereas the instant claims require a nonionic surfactant. Therefore, claims 39-79 of the instant invention are an obvious formulation in view of claims 1-40 of Man et al, U.S. Patent No. 6,649,586.

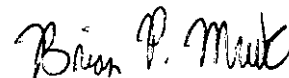
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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Blm

Brian Mruk  
February 16, 2004



Brian P. Mruk  
Primary Examiner  
Tech Center 1700